



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,436	03/14/2001	Michael J. Rojas	13463	3775

23389 7590 04/19/2006

SCULLY SCOTT MURPHY & PRESSER, PC  
400 GARDEN CITY PLAZA  
SUITE 300  
GARDEN CITY, NY 11530

EXAMINER

WU, RUTAO

ART UNIT PAPER NUMBER

3639

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/808,436

Applicant(s)

ROJAS, MICHAEL J.

Examiner

Rutao Wu

Art Unit

3639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of claims***

1. In response filed February 06, 2006 no amendments to the claims were filed. Claims 1-7 are pending in the application.

### ***Response to Arguments***

2. Applicant's arguments filed February 06, 2006 have been fully considered but they are not persuasive.

Regarding claim 1, the applicant argues that Saari et al does not teach detecting data packets having a source and destination IP address moving over the network. The examiner respectfully disagrees. Internet Protocol (IP) address as known in the arts is defined as a unique number or identification that devices use in order to identify and communicate with each other on a computer network utilizing the Internet Protocol record, and any participating device in the network, be it routers, computers etc, must have its own unique number of identification. Saari et al disclose a system for billing for network usage in an asynchronous transfer mode (ATM) networks. (col 3: lines 60-65) According to Fig 2 of Saari et al, data is transferred from a source (27) to a destination (29), since data is transferred in regards to a network system, it is inherent that the data must include the source IP address and destination IP address for the data to reach the correct recipient. Further proof of inherency is shown by documentation published by Cisco systems on ATM network and cell structures

([http://www.cisco.com/univercd/cc/td/doc/product/atm/c8540/wa5/12\\_0/7\\_15c/trouble/cells.htm](http://www.cisco.com/univercd/cc/td/doc/product/atm/c8540/wa5/12_0/7_15c/trouble/cells.htm)). In an ATM network, data is broken into numerous cells, and there are several types of cell structures used. In the LANE Data Frame structure, the data cell has fields for destination address and source address. Therefore, Saari et al teaches detecting data packets having a source and destination IP address moving over the network.

The applicant also argues that Saari et al does not classify the detected data packets based on the source and destination address. The examiner respectfully disagrees. Saari et al disclose that a user can set the service class to a non-real-time service class or a real-time service class, then each cell transmitted from the user's UNI will have the service class bit in the cell header set to indicate the service class. (col 12: lines 35-43) UNI is defined as any user/network interface device that a user uses to access the network. (col 4: lines 5-6) From the above disclosure it is inherent since each network device has an IP address then the data transferred can be classified either in the real-time service class or non-real-time service class based on the sources address transferring to the destination address. Saari et al further disclose that each node for a given connection may perform a table look up procedure upon arrival of a cell at the node to determine whether the cell is associated with a real-time or non-real-time connection. (col 13: lines 5-9)

Therefore, claim 1 stand rejected over Saari et al. Accordingly, claims 2-4 and 6, which depend from independent claim 1 also stand rejected over Saari et al.

Art Unit: 3639

3. With regards to response filed for the U.S.C. § 103 rejection of claim 5, the claim as it is presented states "the method of claim 1, wherein the costing step d) includes a filtering process to exclude certain predetermined data packets from the costing step." Applicant agrees that Scheitzer et al (6,418,467) disclose a filtering process, which excludes certain predetermined data packets, the predetermined data being redundant data. Therefore, Saari et al combined with Scheitzer et al teaches limitation presented in claim 5. Applicant must note that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

4. With regards to response filed for the U.S.C. § 103 rejection of claim 7, in light of the explanation above that shows Saari et al's teaching of classifying detected data, claim 7 stands rejected.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat No. 6,338,046 to Saari et al.

**Referring to claim 1:**

A method for cost accounting of data usage over a network by network users, the network having a plurality of internal IP addresses and access to a plurality of external IP addresses over the Internet, the method comprising the steps of:

- a) detecting data packets having a source and destination IP address moving over the network; (col 2: lines 5-7; col 3: lines 60-65; col 4: lines 56-57, Fig 2)
- b) classifying the detected data packets based on the source and destination address; (col 4: line 33-34; col 12: lines 35-43; col 13: lines 5-9)
- c) assigning the classified data packets to a network user; (col 4: lines 10-14, 55-60)
- d) costing the classified data packets based on a predetermined costing scheme; and (col 4: lines 18-30; col 6: lines 59-62; col 7: lines 38-42)
- e) accumulating and storing the costed data packets based on the assigned user. (col 5: lines 42-45; col 7: lines 23-26)

**Referring to claim 2:**

The method of claim 1, wherein step b) of classifying the detected data packets includes in one of at least the following four categories:

- Internal IP address to internal IP address;
- Internal IP address to external IP address;
- External IP address to internal IP address; and

External IP address to external IP address;

(col 4: lines 11-14)

**Referring to claim 3:**

The method of claim 1, wherein step c) of assigning the classified data packets to the network user includes identifying an IP address to a network user based on network log-on data. (col 4: lines 10-14, 55-60)

**Referring to claim 4:**

The method of claim 1, wherein the predetermined costing scheme of step d) includes a costing factor based on the amount of bandwidth utilization at the time the data packet is detected. (col 1: lines 42-45; col 4: lines 31-42)

**Referring to claim 6:**

The method of claim 1, further including the step of transferring the accumulated and stored costed data packets to a host computer over the Internet. (col 2: lines 27-30; col 7: lines 22-26)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saari et al in view of U.S. Pat No. 6418467 to Scheitzer et al.

Saari et al does not disclose a filtering process that excludes certain data from being included in the costing step.

Scheitzer et al discloses that the central event manager (CEM) perform data merges to remove redundant data and then store the data as a billing record, so the collected data would be more useful in billing accounting (col 10: lines 32-35).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Saari et al's invention to include a step to eliminate certain qualified data from being included in billing calculation. Saari et al provides specific motivation by indicating network operators can implement charging strategies for determining the cost of using network connections and other resources within their jurisdiction independent from the charging strategies employed by other network operators. (col 4: lines 20-24)

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saari et al.

Saari et al does not disclose a programmable device for cost accounting that is comprised of a network controller, a processor and a dynamic random access memory.

Saari et al discloses network nodes that facilitate the transfer of information from a source location to a destination location (col 2: lines 4-6; col 6: lines 18-20)

Saari et al discloses that the content of the billing cell comprises information describing the connection established between the source unit and the node and a processor uses the connection information to compute the cost for usage of the connection. (col 28: lines 25-29)

Saari et al discloses that a memory is provided at the node and the processor copies content of the billing cell received from the source unit into the memory. (col 28: lines 19-22)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that a node in Saari et al's invention is structurally the same as the programmable device discloses in the application.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

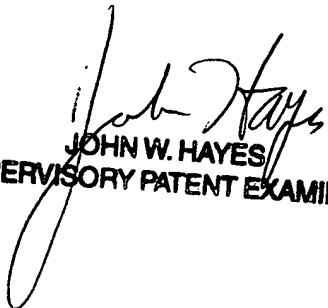
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rutao Wu whose telephone number is (571)272-3136. The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rw

  
**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**